IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO. 517 OF 2002

Babubhai Narottamdas & Co. Appellant

vs.

1. The Income-tax Officer,
Ward 24(3)(4) & anr. Respondents

Mr.M. Subramanian i/b. Mr.V.S. Hedade for the appellant.

Mr.R.V.Desai with Ms.S.V. Bharucha and Mr.Vijay Kantharia i/b. Mr.Pankaj Kapur for the respondents.

CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.

DATED : 7th September 2004

P.C.

Heard Mr.M. Subramanian, the learned counsel for the appellant.

2. The Tribunal in the impugned order observed thus:

> "5. We have carefully considered the submissions made by the rival parties. The original firm was constituted on 5.4.1980 wherein Smt. Rasilaben Kantilal was also a partner. Smt. Rasilaben Kantilal later on wanted to retire from the firm but some disputes arose amongst the partners for the dissolution of the firm. Smt.Rasilaben Kantilal moved Bombay High Court for dissolution and account of the firm. This was done on 3.5.1985. Therefore, the contention of the learned counsel that the firm was dissolved by 9.10.1984 is without any basis. The order of the Hon'ble Bombay High Court also confirms that the firm was in existence

till 28.11.1985. The learned counsel for the assessee vehemently argued that there are two firms in existence. One firm was constituted on 5.4.1980 and the other one was formed after the dissolution of the first firm on 9.10.1984. However, he has not support his contention by any documentary evidence. The Hon'ble Bombay High Court decision also fully supports the contention of the Department that there was one firm in existence which was constituted one 5.4.1980. After going through the facts of this case and perusing material produced before us, we are also of the opinion that there was only one firm in existence which was constituted on 5.4.1980 because that firm was not dissolved till October, 1985 and therefore, the question of coming into existence of another firm in 9.10.1984 does not arise. The Supreme Court decision on this issue is also very clear wherein the Hon'ble Supreme Court has laid down that all the parties including the respondent continue as partners of the firm and they are entitled to sharing of profits of the firm run by the Receiver. The various case laws relied upon by the learned counsel for the assessee have no application to the facts of the present case. These cases pertain only to the registration of the firm or the retirement of one of the partners. Under the circumstances, these cases do not support the contentions of the learned counsel for the assessee. In view of the aforesaid discussion, we find that the AO has correctly rejected the claim of the assessee u/s. 186(1) of the Act. The findings of the learned CIT(A) are, therefore, set aside and that of the AO are restored."

3. Before the Tribunal the case of the assessee was that one of the firm was constituted on 5.4.1980 and after the dissolution of that firm, the assessee-firm was constituted. The Tribunal, however, found that the firm constituted on 5.4.1980 was not dissolved on or before 9.10.1984, but continued to be in existence until October 1985. The consideration of the matter by the Tribunal

is concluded on facts.

4. No substantial question of law arises.

5. Appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)